IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 131 OF 2004

Indian Oil Corporation Ltd. ...Applicant

Versus

M/s. Rosemary & Thyme ..Respondent

Mr. S. Jagtiani instructed by M/s. Desai & Diwanji for the Applicant.
Mr. Zubin Kamdin with Jeenal Lakhabhai instructed by Daftary Fereira and Diwan for the Respondent.

CORAM : DALVEER BHANDARI, C.J.
DATE : OCTOBER 29, 2004.

P.C.

Parties have entered into an agreement on 2nd December, 2002. According to clause 33 of the agreement, the arbitration is to be referred to the sole arbitration of the Executive Director, Western Region.

2. It is stated in the application that on 11th August, 2003, the applicant requested the respondent to consent to the appointment of General Manager (Regional Services), Western Region, or his nominee as sole arbitrator to adjudicate upon the disputes and differences between the applicant and the respondent. It is further incorporated that respondent had failed to respond to the applicant's above letter. The applicant reminded the respondent of the same by

its letter dated 1st September, 2003 wherein it further stated that the failure on the part of the respondent to reply to the same will mean that respondent had nothing to say on the matter and the proceedings would be initiated through General Manager (Regional Services), Western Region, or his nominee without any further reference to the respondent.

3. As the respondent had neither given consent to the appointment of General Manager (Regional Services), Western Region, or his nominee as arbitrator, nor replied to the applicant for the same, the applicant by its letter dated 3rd October, 2003, once again requested the consent of the respondent for appointment of Arbitrator. However, the applicant sought the consent of the respondents to appoint Director (Marketing) of the Applicant or his nominee to act as an Arbitrator in the matter. It is incorporated in the petition that in the event of failure of the respondent to give its consent, it would be understood that the respondent had nothing to say in the matter and the process of arbitration would be initiated through Director, Marketing, or his nominee without further reference to the respondent in the matter.

4. According to the applicant, the respondent again failed to

give consent to the appointment of Director, Marketing or his nominee as the arbitrator in the matter. It is also mentioned that applicant appointed Director, Marketing, Indian Oil Corporation, as per clause 33 of the agreement to act as an arbitrator.

5. I have heard the learned counsel for the parties at length. In my considered view, the appointment of Director, Marketing, Indian Oil Corporation, reflects the intention of the parties and the appointment is in consonance with clause 33 of the agreement. I direct the Director, Marketing, to act as the sole arbitrator and all disputes and differences between the applicant and the respondent arising out of or in connection with the agreement dated 2nd December, 2002 are referred to him. This application is accordingly disposed of.

6. To avoid delay, the parties are directed to appear before the arbitrator on 2nd November, 2004 at 11.00 a.m. at his office.

CHIEF JUSTICE